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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNIVERSAL CITY STUDIOS, INC.,

Plaintiff-Appellant,
Cross-Appellee,

-against-

NINTENDO CO., LTD. and
NINTENDO OF AMERICA INC.,

Defendants-Appellees,
Cross-Appellants.
-----X

Docket Nos. 86-7077
86-7099

AFFIDAVIT IN OPPOSITION
TO THE BILL OF COSTS
FILED BY UNIVERSAL
CITY STUDIOS, INC.
ON JULY 30, 1986

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

ROBERT J. GUNTHER, JR., being duly sworn, deposes and
says:

1. I am an associate with the law firm of Mudge Rose Guthrie
Alexander & Ferdon ("Mudge Rose"), attorneys for defendants-
appellees, cross-appellants, Nintendo Co., Ltd. and Nintendo of
America Inc. I make this affidavit in opposition to the bill of
costs filed by Universal City Studios, Inc. ("Universal") on July 30,
1986.

2. The appeal in the above-captioned action was decided, and
judgment was entered on the docket of the United States Court of
Appeals for the Second Circuit on July 15, 1986. The opinion of the
Court with the stamp of the Clerk of the Court of Appeals is annexed
as Exhibit A. Rule 39(d) of the Federal Rules of Appellate Procedure
provides:

A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after the entry of judgment.

FRAP 39(d). Universal's bill of costs is dated July 30, 1986; thus it was filed more than 14 days after entry of judgment. Universal's bill of costs is therefore out of time and no costs should be awarded to Universal. However, as shown below, even if Universal were entitled to costs on Nintendo's cross-appeal, it would only be entitled to an amount equal to \$430.75 and not the \$3,811.63 in costs that it is requesting.

3. Universal is improperly attempting to tax half the costs of this appeal, when as shown below, only a small portion of the briefs and the Joint Appendix were devoted to the cross-appeal. Although Nintendo's cross-appeal was based on the same factual record as Universal's appeal, the appeal was limited to narrow legal issues which did not require extensive briefing or citation to the Appendix.

4. Universal claims that it is entitled to half the cost of printing its opening brief, amounting to \$1,245. See Affidavit of Richard Weiss, dated July 30, 1982, submitted in support of Universal's bill of costs (hereinafter referred to as "Weiss Aff.") at ¶ 4. However, not a single page of that brief was devoted to Nintendo's cross-appeal. Universal's opening brief is annexed as Exhibit B. Universal's opening brief was completely concerned with the main appeal, which Universal lost. Thus, Universal is not

entitled to any taxable costs with respect to its opening brief and its claim for costs should be reduced by this amount.

5. Universal claims it is entitled to half the cost of printing its reply brief, amounting to \$773.13. See Weiss Aff. ¶ 6. However, Universal devoted only seven pages of its reply brief to the cross-appeal. Universal's reply brief is annexed as Exhibit C. The remainder of the brief was devoted to the main appeal which Universal lost. Universal is only entitled to tax costs for the seven pages devoted to the cross-appeal. Using the rates that were charged by Universal's printer (see Exhibit D to the Weiss Aff.), the cost for seven pages amounts to \$291.25, itemized as follows:

Text: (7 pages at \$30. per page)	\$210.00
Footnotes: (43 lines)	<u>81.25</u>
Total:	\$291.25

Universal's claimed costs for printing its reply brief should be reduced to \$291.25.

6. Universal claims it is entitled to half the cost of reproducing and binding 24 copies of the Joint Appendix, amounting to \$3,587. See Weiss Aff. at ¶ 5. However, in its itemized and verified bill of costs, Universal claims that 12 copies of the Joint Appendix were necessary. See Universal's Itemized and Verified Bill of Costs annexed as Exhibit D. Thus, Universal, by claiming 12 copies of the Joint Appendix as taxable costs, is attempting to charge Nintendo for the full costs of all the necessary copies. This

is improper. Universal is only entitled to taxable costs for the reproduction of those pages in the Joint Appendix which were cited in the cross-appeal sections of Nintendo's and Universal's briefs.

The following number of Joint Appendix pages was cited in the cross-appeal sections of Universal's and Nintendo's briefs:

Universal opening brief	0 pages
Nintendo opening brief	43 pages
Universal reply brief	10 pages
Nintendo reply brief	<u>37 pages</u>
Total	90 pages

Using the rates which were charged by Universal's printer (see Exhibit C to the Weiss Aff.), the cost for reproducing twelve copies of these pages of the Joint Appendix amounts to \$135.00, itemized as follows: 90 pages x 12 x 12.5¢ per page. Universal's claimed costs for reproducing the Joint Appendix should therefore be reduced to \$135.00.

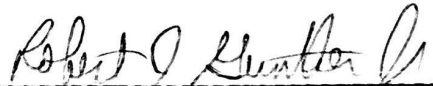
7. Universal claims it is entitled to taxable costs of \$90.00 for reproducing and binding its Supplemental Appendix. See Weiss Aff. at ¶ 7. However, only three pages of Universal's Supplemental Appendix were cited to in the cross-appeal section of Universal's reply brief. The remainder of the pages were cited by Universal in support of its main appeal which it lost. Using the rates which were charged by Universal's printers (see Exhibit C to Weiss Aff.), the costs for reproducing twelve copies of these pages of Universal's Supplemental Appendix amounts to \$4.50, itemized as follows: 3 pages

x 12 x 12.5¢ per page. Universal's claimed costs for reproducing its Supplemental Appendix should be reduced to \$4.50.

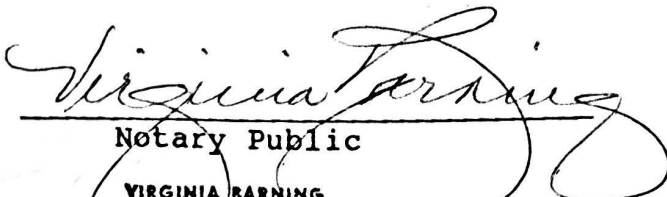
8. Universal's bill of costs was filed out of time, therefore no costs should be awarded to Universal and Nintendo should be awarded its taxable costs of \$2,554.10 in its entirety. See Nintendo's bill of costs filed on July 29, 1986. However, even if the Court were to allow Universal to tax costs, its bill should be ^{calculated} reduced as follows:

Costs for printing 30 copies of Universal's reply brief	\$291.25
Costs for reproducing 90 pages of the Joint Appendix	135.00
Costs for reproducing 3 pages of Universal's Supplemental Appendix	<u>4.50</u>
Total	\$430.75

If this amount were set off against Nintendo's bill of costs which amounts to \$2,554.10, then the total taxable costs due Nintendo would be \$2,123.35.


Robert J. Gunther, Jr.

Sworn to before me this
1st day of August, 1986


Notary Public
VIRGINIA BARNING
Notary Public, State of New York
No. 24-4603310
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1988

United States Court of Appeals
for the Second Circuit

UNIVERSAL CITY STUDIOS, INC.,

Plaintiff-Appellant,

-against-

Docket No. 86-7077, 7099

NINTENDO CO. LTD. and
NINTENDO OF AMERICA, INC.,

Defendants-Appellees,
Cross Appellants.

Counsel for Universal City Studios, Inc.
respectfully submits, pursuant to Rule 39(c) of the Federal Rules of Appellate
Procedure the within bill of costs and requests the Clerk to prepare an itemized
statement of costs taxed against the defendants-appellees-cross-appellants
and in favor of plaintiff-appellant
for insertion in the mandate.

Docketing Action

Cost of printing appendix (necessary copies <u>12</u>)	<u>1/2</u> of \$3,587.00
Cost of printing brief (necessary copies <u>30</u>)	<u>1/2</u> of \$2,490.00
Cost of printing reply brief (necessary copies <u>30</u>)	<u>1/2</u> of \$1,546.25

(VERIFICATION HERE)

Richard Weiss
(signature)

Sworn to before me
this 30th day of July,
1986

[Signature]
Notary Public

MARC WOLINSKY
Notary Public, State of New York
No. 81-4823748
Qualified in New York County
Commission Expires June 30, 1988



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